

Notice of Allowability

Application No.

10/768,956

Examiner

Karen E. Toth

Applicant(s)

MABARY ET AL.

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the response to restriction filed 30 November 2006.
2. ☒ The allowed claim(s) is/are 21-27.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.


THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 9/19/06
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


CHARLES A. MARMOR II
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Invention III, Group A, in the reply filed on 30 November 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 1-20 and 28-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 30 November 2006.
3. This application is in condition for allowance except for the presence of claims 1-20 and 28-35 directed to inventions non-elected without traverse. Accordingly, claims 1-20 and 28-35 have been cancelled.

Allowable Subject Matter

4. The following is an examiner's statement of reasons for allowance:

The prior art of record fails to anticipate or make obvious the method of claims 21-27, including, *inter-alia*, testing peristalsis and bolus transport in an esophagus using a swallow challenge medium having a viscosity of 1000 to 100000 centipoise (high shear), conductivity of 3.8 to 7.6 mS/cm, and enough surface tension to allow the medium to clear from electrode surfaces such that impedance measurements across the electrodes are at least 50% of what they were before the medium reached the

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electrodes; where the testing comprises positioning probes comprising electrodes, swallowing the medium, measuring impedance across the electrodes in real time, and recording the impedance as a function of time.

Robbins (US Patent Application Publication 2003/0044351) discloses a standardized composition for evaluating swallowing in patients with swallowing disorders that may have viscosity of between 3000 and 5000 centipoise; however, Robbins does not disclose the medium being conductive or using the medium with electrodes and measuring impedance. Rather, Robbins compares the ability of a patient to swallow mediums having low, medium, and high viscosities in order to evaluate the swallowing functionality, and adds a radio-opaque material for contrast imaging if a quantitative measurement is desired.

Nguyen (Nyugen, N.G., et al.; Am J Gastroenterol 2006;101:2476-2484) discloses measuring esophageal wave amplitude as a measure of esophageal clearance using a comparison of regular liquid and a low impedance viscous solution; however, Nguyen does not provide any further specifics of the low impedance viscous solution used in the comparison.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Conclusion

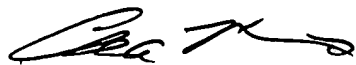
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 6461589 to Robbins, which discloses a similar substance.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen E. Toth whose telephone number is 571-272-6824. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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